

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7424

BILL NUMBER: HB 1462

NOTE PREPARED: Feb 18, 2009

BILL AMENDED: Feb 17, 2009

SUBJECT: Criminal History Checks.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience.

This bill defines an expanded criminal history background check. The bill requires an expanded criminal history background check for a person seeking employment in a school corporation and eliminates a requirement that certain applicants for teaching licensure submit limited criminal history information. It also requires the Department of Education (DOE) to develop a database to track information on school corporation employees who have been reported for certain offenses.

This bill also gives civil immunity for certain school employees for certain acts or omissions during the course of their employment. It adds possession of child pornography to the list of felonies to be reported.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Postsecondary Institutions Fee Exemption:* The total number of postsecondary students for which a name-based limited criminal history background check is currently conducted is not known. To the extent that a postsecondary school of education is currently paying the fee for a student to obtain a name-based limited criminal history background check, expenditures for the postsecondary school of education would be reduced. Fees for name-based limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. [Note: Current statute refers to these checks as limited criminal history checks.]

(Revised) *Indiana State Police*: As proposed, the Indiana State Police (ISP) could experience an increase in workload if postsecondary institutions demand more limited criminal history checks. If postsecondary institutions are exempt from fees used to pay for processing these requests, ISP would have to manage the additional workload within their current level of resources.

ISP may also experience increases in workload to process any increase in requests for national criminal history information from prospective school employees. Any change in workload that ISP might experience from a decrease in limited criminal history information requests may be offset with an increase in the number of national criminal history information requests. Any change in workload will depend on differing processing times required for each type of criminal history request. [Note: ISP reverted \$3.1 M to the General Fund at the end of FY 2008.]

Fingerprint Vendor Selection: The ISP reports that an applicant fingerprint vendor has recently been selected and that the final price for the fingerprint transaction has yet to be finalized. This contract will allow the Records Division of the ISP to receive applicant fingerprint cards electronically and will result in more efficient operations in the Records Division by decreasing workload and increasing response time for requested background checks. The selection of a fingerprint vendor may influence revenue to the General Fund, as well as the workload of the ISP under the bill. Actual impact on workload and revenue is indeterminable as information regarding the vending contract is not currently available.

Department of Education Database: The bill requires the Department of Education (DOE) to develop a database to maintain information regarding school corporation employees who have been reported for felony convictions that result in the revocation of a teaching license. DOE reported they currently have a data system that can track the required information contained in the bill. DOE would experience a minimal increase in staff workload to operate the database as well as train local school corporations in proper use of the database.

Background Information on Criminal History Checks: A name-based limited criminal history check is defined as a criminal history check that searches within the state any criminal activity associated with a person's legal name(s). This check must include (1) a disposition and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

The bill defines that an expanded name-based criminal history check includes a national criminal history background check and either (1) a search of the sex offender registries of all 50 states or (2) a search of the National Sex Offender Registry maintained by the U.S. Department of Justice. The bill also allows an online search of either the sex offender registries of all 50 states or the National Sex Offender Registry to satisfy the requirements for an expanded criminal history background check.

A national criminal history background check is defined as a fingerprint-based check that uses the Federal Bureau of Investigation's (FBI) Automated Fingerprint Identification System (AFIS) to match an applicant's fingerprints to any crimes committed by that applicant nationally or any other method of positive identification. A national criminal history background check does not provide a search of the National Sex Offender Registry or the sex offender registries maintained by the 50 states. A national criminal history background check is also obtained through the ISP.

A criminal history check review challenge occurs when an applicant who received a name-based limited criminal history check challenges the results by submitting to a fingerprint-based criminal background check performed by the ISP.

Explanation of State Revenues: (Revised) *Limited Criminal History Check for Teachers Applying for Licensure:* Current law requires applicants for teaching licensure to submit limited criminal history information. The bill eliminates this requirement.

Revenue from limited criminal history information requests made by teachers seeking new licensure or renewals will decrease under the bill regardless of who finances the request. The decrease in revenue to the General Fund and the Indiana Office of Technology Portal Fund is expected to be approximately \$369,000 for FY 2010 and FY 2011. A breakdown is presented in Table A.

Table A. Decreases in Limited Criminal History Requests and Revenue.

	Total Requests	General Fund	IOT Portal Fund
FY 2010	13,000	\$91,000	\$91,240
FY 2011	13,360	\$93,250	\$93,766
Total	26,360	\$184,250	\$185,006

The Department of Education (DOE) reports there are approximately 74,000 licensed teachers in the state during academic year 2007-2008. Teachers can obtain three different teaching licenses; one that must be renewed every 2 years, one that must be renewed every 5 years, and one that must be renewed every 10 years. Using information regarding teacher's years of experience, it was assumed that all teachers with 0 or 1 year of experience would apply for only the 2-year licensure, teachers with 2 years of experience would apply for 5-year licensure, and teachers with 7 years of experience or any year of experience ending with 7 would apply for 10-year licensure. Assuming there is no teacher attrition in the state, a total of 13,000 licensure applications are expected to be received in FY 2010 and 13,360 licensure applications are expected to be received in FY 2011.

Under the bill, applicants for initial practitioner's licensing will be required to have an expanded criminal history background check conducted by their employing local school superintendent as a condition of licensure. Currently, applicants for initial practitioner's licensing must obtain limited criminal history information. It is assumed that the number of initial practitioner license holders are new teachers with no years of experience.

Fees for limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. Limited criminal history requests that are made by mail or through AccessIndiana provide \$7 per request to the General Fund. Requests made online produce either \$8 or \$9.32 to the Indiana Office of Technology, dependent upon if the request is made by an AccessIndiana subscriber or not.

Revenue to the General Fund will increase to the extent that new school employees obtain national criminal history background checks. For information on national criminal history background check fees, see Table B.

Table B: Local School Criminal Background Check, Current Law and As Proposed.		
	Current Law	As Proposed
Type of Check and Requirement	All licensure applicants are required to submit at least a limited criminal history check. However, depending on school corporation or charter school policy, <u>may</u> be required to submit a national criminal history check for new hires.	Licensure applicants would no longer be required to submit criminal history information as a condition of licensure. Would be required to collect national criminal history check and have a search performed of either (1) the National Sex Offender Registry or (2) the sex offender registries for all 50 states, for all individuals applying for employment with a school corporation.
Fee	<u>Limited</u> : \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National</u> : \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government.	National criminal history check: \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government. The fees to complete a search of the sex offender registries in all 50 states or the National Sex Offender Registry are not known. However, no revenue would be forwarded to state/local governments.

If new school employees are required to obtain national criminal history background checks, an estimated \$57,800 of revenue is will be deposited in the General Fund each year. The Department of Education reports that for academic year 2007-2008, there were approximately 3,368 new teachers out of 74,000 licensed teachers in the state of Indiana. Additionally, of 10,676 administrators and other noncertified public school employees, it was estimated that 486 individuals would be new employees. *Limitations*: This estimate (1) may not reflect precisely the number of noncertificated employees and administrators in public schools, (2) does not include an estimate for noncertificated employees and administrators of private schools, and (3) does not include teachers and noncertificated employees who transfer between schools, who all would be subject to the criminal history requirements contained in the bill.

Postsecondary Schools of Education Fee Exemption: To the extent that a student or a postsecondary school of education currently obtains a name-based limited criminal history check for the purposes of the bill, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would depend on the number of students obtaining a name-based limited criminal history check, the method in which the check was obtained, and the fee paid for the check. Postsecondary institutions will experience a decrease in expenditures only to the degree they were paying for criminal background checks for students prior to this bill.

Under current law, a person may request a criminal history check review challenge (fingerprint identification is required) after having obtained a limited criminal history check (can be obtained through subject or fingerprint identification). As proposed, the number of name-based limited criminal history checks could increase, impacting the number of criminal history check review challenges for the state. If criminal history review challenges increase as a result of this bill, revenue to the General Fund can increase by fees paid for these requests. Currently, ISP charges \$10 per review challenge. Actual increases of review challenges is indeterminable.

Phone interviews with selected state universities revealed that the policies regarding payment for criminal background checks in postsecondary institutions varied across the board; sometimes the burden fell on the student, and sometimes the institution funded the cost of the check. Actual numbers of criminal background checks by postsecondary institutions was indeterminable because each institution has different policies regarding background checks for students and few kept data on how many background checks they had requested in years past.

Modification of Criminal History Check Policy: Fees vary for limited criminal history background checks and depend on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the IOT Portal Fund. Currently, individuals challenge the results of a name-based criminal background check by requesting a fingerprint-based review challenge. Fees are assessed for a review challenge and these fees are deposited in the General Fund. Any change in revenue would depend on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per review challenge) and the number of people who would, under the bill, obtain a name-based expanded criminal history check (for which the state would experience no increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

Background Information: In FY 2007, ISP reports that criminal background checks generated \$2.3 M in revenue for the General Fund.

Explanation of Local Expenditures: (Revised) *Criminal Background Check Requirement:* Under the bill, a local school superintendent is required to conduct an expanded criminal history check for all new employees in a school corporation. The bill is silent on who will bear financial responsibility to obtain the required expanded criminal history information.

The bill requires all individuals seeking employment with a school corporation to obtain a national criminal background check as well as a search of the National Sex Offender Registry or the sex offender registries of all 50 states. A national criminal history background check costs \$32.25; however, the costs of obtaining a search of the sex offender registries are unknown. The Department of Education reports that for academic year 2007-2008, there were approximately 3,300 new teachers in the state of Indiana. This number does not account for (1) school personnel other than teachers and (2) teachers who transfer between schools who may be subject to the criminal history requirements contained in the bill. If the schools finance the requests for all 3,300 new teachers, the increase in school expenditures for new teachers alone is estimated to be \$106,400 per year.

Behavior Plan Requirement: Under the bill, if a student is removed from a class by a teacher for disruptive behavior, the school principal is required to meet with the student, the student's teacher, and the student's parent before the student may return to class. This bill may increase the workload of school principals to the extent students are removed from class.

Explanation of Local Revenues:

State Agencies Affected: ISP; DOE; IOT; Postsecondary schools of education.

Local Agencies Affected: Local school corporations and townships; Charter schools

Information Sources: Major Doug Shelton, ISP, (317) 232-8265; Indiana Department of Education

Databases; ISP Record Division, ISP Website (www.in.gov/isp); Dean Mark Ferguson, Vincennes University, (812) 888-4301; Kathy Herald, Ball State University College of Nursing, (765) 285-1834; Tom Warner, Ball State University Associate Vice President for Business Affairs, (765) 285-1133; Cindy Wise, Indiana University, (812) 855-9845; Cathy Sleeth, Purdue University (765) 494-5927; Debbie Hine, Indiana Department of Education, (317) 232-0840; Neil Ruddock, Indiana Department of Education, (317) 232-6671; <http://www.instantcriminalchecks.com>.

Fiscal Analyst: Bill Brumbach, 232-9559.